

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12471 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair
copy of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil
judge ?

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RAOJI G. PADAMSINHJI - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR MEHUL S SHAH for Petitioner

MR M R MENGDEY AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 11/06/2007

ORAL JUDGMENT

1. Mr.Mehul S. Shal, learned counsel for the petitioner and Mr.M.R. Mengdey, learned Assistant Government Pleader for the respondents - State.
2. By this petition under Article 227 of the Constitution of

India, the petitioner – land-holder is challenging order dtd.25/6/1993 passed in Revision Application No.TEN/BA/393/90 by Member, Gujarat Revenue Tribunal, Ahmedabad, dismissing the revision application and confirming the orders passed by the Dy.Collector and Competent Authority on 27/3/1990 and 30/9/1989 respectively.

3. The submission of Mr.Mehul S. Shah, learned counsel for the petitioner is that a perusal of earlier remand order dtd.27/1/1989 passed by the Gujarat Revenue Tribunal in Revision Application Nos.303 and 304 of 1986 would clearly show that there were specific directions to the Competent Authority to do certain acts, such as, to issue notices to the mother and brother of the holder, provide them appropriate opportunity to prove their case that the property was Joint Family Property and apart from the interest of the present petitioner who was handed over the possession of the property after attaining majority and, that whether certain lands were exclusively given to the mother of the petitioner and appropriate opportunity to the parties to lead evidence and prove their case.
4. It appears that the said order was passed by the learned Gujarat Revenue Tribunal in Revision Application Nos.303 & 304 of 1986 which were filed by the present petitioner namely Raoji Gopalsinhji Padamsinhji and Dariya Kunvarba Devdiji – mother of the petitioner. Despite these directions, the Competent Authority did not issue any notice to Mulsinh son of Padamsinhji – brother of the petitioner and/or to the mother of the petitioner. Not only these, the learned Competent Authority, contrary to

the directions contained in remand order, included certain land which were not earlier included in the final statement. However, the order passed by the Competent Authority declaring 51 Acres and 18 Gunthas land was upheld by the Dy.Collector and by the Gujarat Revenue Tribunal.

5. According to Mr.Shah, learned counsel for the petitioner, the manner in which the remand order was violated, would clearly show that the Competent Authority was trying to sit over the order of remand and the Gujarat Revenue Tribunal was trying to nullify the impact and effect of the earlier order of remand. According to him so long as the remand order stands, no person including the Gujarat Revenue Tribunal itself can go contrary to the said order.
6. Mr.Mengdey, learned Assistant Government Pleader for the State Government, however, submitted that from the perusal of the order passed by the Gujarat Revenue Tribunal on 25/6/1993 (impugned order), would show that the authority has considered legal aspects and in view of the findings that the mother and brother would have no share in the property and even their joinder would not have changed the legal position, non-issuance of the notices to the mother and brother of the petitioner would not make any difference and the authorities were justified in passing the orders.
7. Once a higher forum or a Court, after setting aside an order passed by the sub-ordinate Court or Tribunal, remands the matter with certain directions, then such directions would be binding to all concerned. Such order of remand can always be challenged, but if the same is

allowed to attain finality, then the order would become binding even against the very same authority, which on an earlier occasion had remanded the matter.

8. In the present matter, the earlier order of remand would bind the parties so also the Gujarat Revenue Tribunal. Nobody would be allowed to say that the order of remand would not be binding and/or there was no necessity to give full effect to the said order.
9. On the earlier occasion, the Gujarat Revenue Tribunal had clearly observed that appropriate opportunity should be given to the brother and mother of the petitioner to prove their case and to prove the fact that the property belonged to late Jagirdar Padamsinhji and was succeeded by the widow and two brothers.
10. In a given case, if the recorded holder who happens to be a joint owner, does not raise any objection, then the rights of the unrepresented person cannot be curtailed. In a matter of ceiling, it would be unjust to say that the recorded holder would represent the interest of the others who are still unrepresented, have not been issued any notice, nor have been given any opportunity of leading evidence or hearing.
11. Taking into consideration the earlier order of remand and in view of the findings afore-recorded that the directions contained in the remand order were not fully and truly observed, I must hold that the impugned orders passed by the Competent Authority approved by the Dy. Collector and confirmed by the Gujarat Revenue Tribunal cannot be allowed to stand. All the three impugned orders, order dtd.30/9/1989 passed by the Mamlatdar-cum-Agricultural Lands Tribunal (ALT), order dtd.27/3/1990 passed by the

Dy.Collector in appellate jurisdiction and order dtd.25/6/1993 passed by the Gujarat Revenue Tribunal in revisional jurisdiction, are hereby quashed.

- 12.The matter is remanded back to the Competent Authority / Mamlatdar-cum-Agricultural Lands Tribunal to issue appropriate notices to brother of the petitioner namely Mulsinh son of Padamsinhji and mother of the petitioner namely Dariya Kunvarba Devdiji afford appropriate opportunity of leading evidence and hearing to the petitioner, his brother and mother and to decide the matter afresh, by a speaking order in accordance with law.
- 13.The parties present in this Court shall appear before the learned Mamlatdar-cum-ALT on 23/7/2007 with a copy of this judgment enabling to the authority to know what it is required to do. After effecting service of notice on the mother and brother of the petitioner, the Competent Authority shall proceed in accordance with law.
- 14.The petition is allowed accordingly. Rule is made absolute to the aforesaid extent. No costs.

(R.S. GARG, J.)

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